Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1234

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioners,

—against—

COMPAGNIE NATIONALE AIR FRANCE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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No. .....

INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS, AFL-CIO,

Petitioners,

- against -

COMPAGNIE NATIONALE AIR FRANCE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

Petitioner prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW.

The opinion of the court of appeals (App.1a-4a) is not officially reported. The decision and order of the District Court for the Southern District (Tenney,J) is reported at 433 F.Supp. 1087 (App. 7a-29a)

JURISDICTION

The judgment of the court of appeals (App. 5a, 6a) was entered on December 6, 1977. The jurisdiction of this Court is invoked under 28 USC&1254(1) and in accordance with Supreme Court Rule 19.

QUESTIONS PRESENTED

1. Whether a complaint in the United States District Court specifically alleging Railway Labor Act (RLA) &45 U.S.C. &151et. seq., violations by an air carrier should be dismissed as a representational dispute within the jurisdiction of the National Mediation Board (NMB) when there is no petition pending at the NMB nor any one else claiming to be the representative and there is a contract between the carrier and a union which recognizes the union as the collective bargaining representative?

2. Whether a voluntary agreement covering less than a class or craft which recognizes a collective bargaining representative is subject to the provisions of the RLA.

3. Can a carrier exclude itself from coverage of the RLA by private agreement?

STATUTES INVOLVED

The Railway Labor Act 45 U.S.C. &151 et. seq., specifically Section 2, Fourth provides:

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No

carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Section 2, Ninth provides:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees in-

volved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

STATEMENT OF CASE

The issue on this appeal is the dismissal of the complaint in which the International Association of Machinists and Aerospace Workers, Afl-Cio. (hereinafter the IAM & AW) sought a preliminary injunction against Compagnie Nationale Air France (Air France) for violations of the Railway Labor Act (RAL) && 2,6.

The IAM & AW is seeking to enjoin Air France from unilaterally terminating a labor contract between the IAM & AW and Air France, from dealing with anyone other than IAM & AW as the exclusive

representative of the cargo agents employed at Air France, and from violating the terms and obligations of the contract in effect between the IAM & AW and Air France covering the cargo agents.

The IAM & AW brought the action by way of an Order to Show Cause with a Temporary Restraining Order, Summons and Complaint. After a preliminary hearing before the Honorable Charles L. Brieant, U.S. District Court Judge for the Southern District of New York, in which Judge Brieant found that the equities were decidedly in favor of the IAM & AW, Judge Brieant signed the Order to Show Cause with the Temporary Restraining Order requiring Air France to recognize and treat with IAM & AW as the representative of the cargo agents, to deduct union dues and to honor the terms and conditions of the contract which had been in effect.

On the return day, June 24, 1977, Honorable Charles H. Tenney, U.S. District Court Judge for the Southern District of New York, had a limited hearing which he adjourned until the following week. No further hearing was ever held and Judge Tenney issued his decision dismissing the case for lack of jurisdiction on the ground the issue was a representational question and thus a major dispute within the exclusive jurisdiction of the National Mediation Board (NMB)(App. 7a-28a) A Motion by IAM & AW to reargue the decision was denied by the Court in an endorsed order.

The Court of Appeals for the Second Circuit heard the appeal on December 6, 1977 and rendered an oral disposition in which it affirmed the District Court with two corrections. (App.1a-4a)

FACTUAL BACKGROUND

The IAM & AW has been the exclusive representative of the cargo agents at Air France for 25 years. During this time the parties have entered into many successive contracts covering the cargo agents. During this time the NMB has assisted in settling labor contracts, the most recent being the 1974 settlement of a four months strike.

On January 3, 1977, a three year contract was signed between the parties covering the period until September 30, 1979. The terms of the contract were in force until May 4, 1977, a period of five months, when Air France sent a telegram to Wally Haber, General Chairman IAM & AW which stated that as of May 4, 1977, the contract had been terminated under Article XVII(q), Air France would no longer recognize the IAM & AW as the bargaining agent and would no longer deduct union dues.

Article XVII (q) of the contract states:

"Notwithstanding the "Effective Date and Duration" provisions of this Agreement and any references to the Railway Labor Act in this Agreement, if a decision of the National Mediation Board permits the certification of a representative of employees of any airline who perform functions analogous to those being performed by the employees covered by this Agreement in a group other than the class or craft of which the NMB has historically determined such employees to be a part, then this Agreement will terminate."

Air France posted a notice at the cargo facilities on the same day ordering the cargo agents to attend a meeting. At the meeting Air France officials, Roland J. Hawkins, Vice-President and General Manager, Eugene Carrara, Personnel Services Manager and John Devlin, Airport Cargo Manager, informed the cargo agents that the contract was cancelled,

the IAM & AW no longer represented them and Air France would not check off the IAM & AW dues. The cargo agents were ordered to select three representatives from amongst the cargo agents to meet with Air France to negotiate over terms and working conditions. Similiar meetings took place at Air France's other stations in the United States. Since May 4, 1977, Air France has met with certain employees and has changed the terms and working conditions. Since May 4, 1977, Air France refuses to treat with the IAM & AW as the representative of the cargo agents and has refused to check off dues.

Air France stated in the telegram of May 4, that it was basing its actions on a decision by the NMB in United Airlines, Inc., R-4550 which involved employees who do different work than the cargo agents at Air France. At no time during this series of events has Air France filed a Section 6 notice as required by the RLA.

When Wally Haber, General Chairman, IAM & AW, tried to have the issue submitted to arbitration and the system board of adjustment, Eugene Carrarra, Personnel Manager and Officer in charge of labor contracts at Air France, refused to do so. As Air France would not meet to discuss the resulution of the issues as required by RLA &2, Second the IAM & AW commenced this action to enjoin Air France violating the RLA.

The complaint specifically pleaded the violations of the RLA inclusive of all the actions taken by Air France from the telegram of May 4, to the changing of the terms of employment.

REASONS THE WRIT SHOULD BE GRANTED

1. THE JURISDICTION OF THE FEDERAL COURTS AND THE NMB SHOULD BE DEFINED AS THERE APPEARS TO BE A CONFLICT BETWEEN THE DECISIONS OF DIFFERENT COURTS OF APPEAL.

The crux of the decision of the District Court, which was affirmed by the Court of Appeals, Second Circuit, was stated (App. 27a): "This Court concludes that the issue here is really one or representation, a subject which Congress has given the Mediation Board the duty to determine."

The complaint specifically alleged that the carrier had violated the RLA by its actions and sought injunctive relief restoring the parties to the same status and conditions as had been in effect prior to the decision of Air France to terminate the contract. The complaint sought to continue the contract which had been signed on January 3, 1977 and was by its terms to run until September 30, 1979. Air France had voluntarily recognized the IAM & AW as the collective bargaining representative for the cargo agents as it had done for 25 years. During the period from the signing of the contract on January 3, 1977 until May 4, 1977, when Air France sent the telegram (App. 29a) that the contract was cancelled, no one else claimed to be the collective bargaining representative nor did anyone file a petition with the NMB asking for an election to determine the representative. Under virtually similiar circumstances in Burlington Northern Inc. v. American Railway Supervisors Association, 503 F. 2d 58 (7th Cir. 1974), cert. denied, 421 U.S. 975 (1975) the Court addressed the same issue of jurisdiction as follows:

"Before reaching the merits we must consider the threshold issue of whether this Court has jurisdiction to decide the questions presented in

the cross-appeals. The District Court held that the controversy between plaintiff and ARSA was in essence a Railway Labor Act representation dispute, the resolution of which must be left to the NMB, and on this ground, dismissed both the complaint and the counterclaim. We disagree with the District Court on this point. In our view, the dispute before us is not one under 45 U.S.C. &152 Ninth, because no employee or other union has challenged ARSA's certification."

It is section 2, Ninth RLA on which the District Court based its decision of giving the NMB jurisdiction in the instant case. As in the Burlington Northern case, there was no challenge to the IAM & AW representation status. The holding in the Burlington Northern case should apply to the facts of this case, thus jurisdiction should not be with the NMB but rather in the Federal Courts. In the oral disposition of this matter, the Court of Appeals distinguished this case from the Burlington Northern case on the grounds that the Burlington Northern case was based on a Merger Agreement and the Interstate Commerce Commission actions. (App. 2a, 3a). In the Burlington Northern case the Court took into consideration both of these grounds but proceeded to further hold that these two factors were not contrary to the RLA. The Court stated:

"The Employees Merger Protection Agreement was a condition of the ICC approval of the merger, authorized by Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. &5(2)(f). The agreement is not inconsistent with any provision of the RAilway Labor Act., ..."

The Court's holding in the Burlington Northern case, although involving other considerations, is re-

levant to the facts in this case as to the Seventh Circuit's interpretation of Section 2, Ninth of the RLA. Under the Burlington Northern decision the NMB would not have jurisdiction and the relief sought for violations of the RLA would properly be before the Federal Courts as established in Texas & NORR Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548 (1930), Brotherhood of RR Trainmen v. Central of Ga. Ry Co., 305 F. 2d 605 (5th Cir. 1962), Westchester Lodge 2186, Brotherhood of Railway and Steamship Clerks v. Railway Express Agency, Inc., 329 F 2d 748 (2nd Cir. 1964). The holding of the Second Circuit is contrary and would give jurisdiction to the NMB and exclude the Federal Courts. The issue should be resolved so that uniformity will prevail regardless of the Court of Appeals in which this issue would arise.

2. THE CASE RAISES AN IMPORTANT QUESTION UNDER THE RAILWAY LABOR ACT WHICH SHOULD BE SETTLED BY THIS COURT.

The issue of whether a voluntary agreement which recognizes collective bargaining representative of less than a class or craft unit is within the coverage of the RLA is of substantial consequence. There are great numbers of contracts entered into by voluntary recognition agreements of representatives of less than class or craft units covering thousands of employees in all parts of the United States. The NMB has proffered its services and been party to the settlement of labor disputes in these situations pursuant to the RLA.

Air France first raised the issue in the Court of Appeals. It is Air France's position that because

the language in the RLA &2 - Fourth refers to representatives of the "class or craft" that any unit less than a craft or class, regardless of whether there is a voluntary recognition agreement, is not covered by the RLA. Air France cites as authority for its position the decision of the District of Columbia Court of Appeals in International Brotherhood of Railway, Airline and Steamship Clerks, 402 F. 2d 196 (D.C. Cir.), cert. denied, 393 U.S. 848 (1968). that certification by the NMB that employees had no representative as the result of an election to carry out negotiations contemplated by the RLA and that the employment relationship of the parties was not governed by the RLA.

The issue is critical because in situations where there are such circumstances then neither the carrier nor the employee representative would have a right to invoke the jurisdiction of the Federal Courts or the NMB when labor disputes arose and would be left to their respective self help resources. The unions would have to decide at the end of each contract to file a petition for an entire craft or class in order to safeguard their status or take the chance that the carrier would continue to negotiate with them although without recourse to the RLA. If Air France is correct entirely different employment relationship then presently exist will come into existence as the issue of representational status will be constantly hanging over negotiations between the parties. This situation would create turmoil at both the NMB and the bargaining table.

CONCLUSION

For the foregoing reasons,this petition should be granted and a writ of certiorari issue to review the decision and judgment of the Court of Appeals for the Second Circuit.

Respectfully submitted,

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February 24,1978

Appendices

APPENDIX A

UNITED STATES COURT OF APPEALS

For The Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- - - - - - - - - - - - - - - - - -X

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,

Appellants,

-against- Dkt. No.
77-7430

COMPAGNIE NATIONALE AIR
FRANCE,

Appellee.

- - - - - - - - - - - - - - - - - -X

Before:

HON. WALTER R. MANSFIELD,
J. EDWARD LUMBARD and
J. JOSEPH SMITH, Circuit Judges.

New York, N.Y., December 6, 1977

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Statement made by the court at disposition of appeal in open court.

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JUDGE MANSFIELD:

Gentlemen, we have read the record and reviewed it. We do not believe that anything need be added to what Judge Tenney has written. You've presented your case very well, Mr. Quill, but after reading and reviewing the briefs, we are satisfied that the judgment of the district court should be affirmed, essentially for the reasons stated by Judge Tenney, with one or two exceptions. We view this as basically a representation dispute which should be within the primary jurisdiction of the National Mediation Board. We view the Burlington Northern case as clearly distinguishable for the reason that the labor contract enforced by the court, including recognition of the certified union, had been imposed upon the carrier by the ICC as a precondition to the Merger Agreement.

Thus jurisdiction was based on both the Merger Agreement and the ICC's action. No such agency action is found here.

Now there are one or two things in Judge Tenney's opinion that we do not necessarily accept. One of those is the statement that Article XVII(q) was inserted in the contract in order to get around some prior rulings of the National Mediation Board, which denied certification of cargo agents as a class or craft of employees. That we do not accept as the reason for the clause. Secondly, I think he inadvertently referred to the representational question as a "major," as distinguished from a "minor," dispute within the jurisdiction of the National Mediation Board. We would classify it as a representational dispute.

With those qualifications, we affirm, essentially for the reasons stated by Judge Tenney. Thank you.

APPENDIX B

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of December, one thousand nine hundred and seventy-seven.

Present: HON. J. EDWARD LUMBARD
HON. J. JOSEPH SMITH
HON. WALTER R. MANSFIELD

Circuit Judges

- - - - - - - - - - - - - - - - -X

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,

Plaintiffs-Appellants,

v. 77-7430

COMPAGNIE NATIONALE AIR FRANCE,

Defendant-Appellee.

- - - - - - - - - - - - - - - - -X

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

by
ARTHUR HELLER,
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -X

INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO (IAM), et al,

Plaintiff,

-against-

77 Civ. 2913 (CHT)

COMPAGNIE NATIONALE AIR FRANCE,

MEMORANDUM

Defendant.

#46115

- - - - - - - - - - - - - - - - - -X

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TENNEY, J.

Plaintiff International Association of Machinists and Aerospace Workers ("IAM") has applied for a preliminary injunction enjoining defendant Compagnie Nationale Air France ("Air France") from unilaterally cancelling the previously effective collective bargaining agreement of January 3, 1977 and from ceasing to recognize plaintiff as the legal representative of the cargo agents at Air France. After a brief hearing before Judge Brieant of this court on June 15, 1977, a temporary restraining order was signed requiring the parties to operate under the January 3 agreement. On June 24, 1977, the parties appeared in court to argue the plaintiff's motion for a preliminary injunction and the Court continued the temporary restraining order until it could determine if jurisdiction was

proper to entertain the action for injunctive relief. For the reasons stated below, plaintiff's motion is denied and the case is dismissed.

The relevant details are as follows. Plaintiff is a labor union which has been "the exclusive bargaining representative for the cargo agents and lead cargo agents employed by Air France since 1950." Complaint ¶ 5. Airline employees performing cargo agent duties have "since 1947, historically been included in an overall 'craft or class' of Clerical, Office, Fleet an Passenger Service employees." Carrara Affidavit, sworn to June 23, 1977 at 3. Defendant Air France contends that the cargo agents wish to separate from the IAM and seek to be represented as a separate group by the International Brotherhoods of Teamsters ("IBT"). The Railway Labor Act

("RLA"), 45 U.S.C. §§ 151-88, provides a procedure by which airline employees select a labor organization as their collective bargaining representative, provided that such representative has been so designated by a majority of the employees in a "craft or class" of airline employees and recognized by the National Mediation Board ("NMB"). RLA § 2, Fourth and Ninth, 45 U.S.C. § 152, Fourth and Ninth.

On January 3, 1977, Air France and IAM agreed to a new collective bargaining contract, which included, inter alia, the following unique provision in Article XVII (q):

> "Notwithstanding the 'Effective Date and Duration' provisions of this Agreement, and any reference to the Railway Labor Act in the Agreement, if a

decision of the National Mediation Board permits the certification of a representative of employees of any airline who performs functions analogous to those being performed by the employees covered by this Agreement in a group other than the class or craft of which the National Mediation Board has historically determined such employees to be a part, then this agreement will terminate."

On May 4, 1977, Air France notified IAM of an NMB decision of March 23, 1977 which recognized as a separate bargaining unit United Air Lines freight agents. See NMB Case No. R-4550, annexed as Exhibit A to Affidavit of Eugene Carrara, sworn to June 20, 1977. Air France construed this decision as permitting certification of a

collective bargaining representative for United Air Lines employees who perform functions analogous to those performed by Air France's cargo agents. Air France therefore informed IAM that the January 3 agreement was terminated in accordance with the provisions of Article XVII (q).

Five weeks later IAM institited this action. It contends that Air France's action in unilaterally ceasing performance under the agreement was unlawful and in violation of that agreement and sections 2 and 6 of the RLA. Complaint ¶¶ 8-12. It is undisputed that neither Article XVII (q) nor any other term of the contract prescribes a method or procedure for determining whether an NMB decision triggers Article XVII (q). IAM further contends that even if Air France's action is deemed consistent with

Article XVII (q), that article itself must be declared illegal and in violation of the RLA since it "was forced into the contract by Air France, [and] it is clearly an attempt to by-pass legislation passed by Congress and is in violation of public policy and thus is null and void." Id. ¶ 12. IAM argues that Air France's decision to no longer recognize IAM as the representative of the cargo agents "unilaterally changed the terms and working conditions of the cargo employees in violation of Section 6 of the Railway Labor Act," id. ¶ 10, and that "Air France is attempting to use the United Airlines determination as a subterfuge to eliminate the [IAM] as the representative of the cargo agents in violation of Section 2 of the Railway Labor Act." Id. ¶ 11. Air France argues in opposition that it did not act

unilaterally to change the contract but that its termination of the contract was itself an act authorized by Article XVII (q) of the contract. Air France also asserts that the article was legitimately bargained for and is proper and lawful. IAM requests the Court to issue an order enjoining Air France from interfering with the representation of its employees by the IAM and declaring the January 3 contract in full force. Id. ¶¶ 15-16.

In essence, the plaintiff is asking the Court to construe Article XVII (q) to determine whether Air France's actions complied with the contract and with the Railway Labor Act. It is well-settled that Congress established the act to provide explicit procedures for the settlement of labor disputes. The specific procedure to

be used in any given dispute depends on whether that dispute is considered "major" or "minor". 45 U.S.C. §§ 151 et seq. The Supreme Court has defined these terms as follows:

> "[Major disputes relate] to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> "[Minor disputes contemplate] the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or

to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case." Elgin, Joliet & Eastern Railway Co. v. Burley, 325 U.S. 711, 723 (1945).

The United States Court of Appeals for the Second Circuit has further explicated the distinction between major and minor disputes.

"Distinguishing between a minor dispute (interpretation and application of an existing agreement) and a major dispute (formation or alteration of an agreement) can sometimes be quite difficult, for there are areas in which the line seems rather indistinct. Agreements are ofttimes changed as much by

interpretation as by the substitution of new agreements. As Judge Waterman observed for this court in Rutland Railway Corp. v. Brotherhood of Locomotive Engineers . . . 'the difference, on the one hand, between the interpretation and the application of an existing agreement, and, on the other hand, a change in an original intended basis of agreement is often a question of degree.' 307 F.2d at 33." Westchester Lodge 2186, Brotherhood of Railroad Clerks v. Railway Express Agency, Inc., 329 F.2d 748, 752 (2d Cir. 1964).

If the quarrel between the parties is whether the terms of the collective bargaining agreement of January 3 has been complied with, then it would be characterized as a minor dispute. Such disputes fall within

the exclusive jurisdiction of the National Railroad Adjustment Board, which has authorized local System Boards of Adjustment to consider these disputes under section 204 of the RLA, 45 U.S.C. § 184. Elgin, Joliet & Eastern Railway Co. v. Burley, supra; United Transportation Union v. Penn Central Transportation Co., 505 F.2d 542, 543-44 (3d Cir. 1974); Local 1477, United Transportation Union v. Baker, 482 F.2d 228, 230 (6th Cir. 1973); International Association of Machinists and Aerospace Workers v. Northeast Airlines, Inc., 473 F.2d 549, 554 (1st Cir.), cert. denied, 409 U.S. 845 (1972); Airlines Stewards & Stewardesses Association, Local 550 v. Caribbean Atlantic Airlines, 412 F.2d 289, 291 (1st Cir. 1969); Ruby v. American Airlines, Inc., 323 F.2d 248 (2d Cir. 1963), cert. denied, 376 U.S. 913 (1964); District 100,

International Association of Machinists and Aerospace Workers v. Compagnie Nationale Air France, 414 F.Supp. 538, 542 (E.D.N.Y. 1976); Deboles v. Trans World Airlines, 350 F.Supp. 1274, 1283-84 (E.D. Pa. 1972). Therefore, this Court is without authority to interpret the terms of the collective bargaining agreement and determine whether Air France's actions are in lawful compliance with the agreement. Although the section primarily contemplates resolution of employee grievances, its literal mandate must be adhered to, and it is irrelevant that the dispute in this case is between a union and an employer rather than an employer and an employee. International Association of Machinists and Aerospace Workers v. Northeast Airlines, Inc., supra, 473 F.2d at 555; Deboles v. Trans World Airlines, supra, 350 F.Supp. at 1284.

A federal court may, however, issue an injunction to preserve the status quo in order to protect the jurisdiction of the Adjustment Board when a dispute has been submitted for consideration pursuant to the procedures outlined in 45 U.S.C. § 184. See Brotherhood of Locomotive Engineers v. Louisville & Nashville Railroad Co., 373 U.S. 33 (1963); United Transportation Union v. Penn Central Transportation Co., supra, 505 F.2d at 545; Westchester Lodge 2186, Brotherhood of Railroad Clerks v. Railway Express Agency, Inc., supra, 329 F.Supp. at 753.

Because neither party has exhausted appropriate remedies by following the grievance procedure outlined in Article XIV of the collective bargaining agreement and submitting the dispute to the System Board of Adjustment, this Court cannot issue an

injunction to protect the exclusive jurisdiction of a forum whose authority has not been invoked. United Transportation Union v. Penn Central Transportation Co., supra, 505 F.2d at 545; Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union, 413 F.Supp. 681, 685 (E.D. Mich. 1976).

Plaintiff also challenges the legality of Article XVII (q) of the contract in light of the RLA. This claim, however, does not depend upon an interpretation of the terms of the contract and is therefore not a minor dispute within the jurisdiction of the System Board of Adjustment. IAM claims that the article is a subterfuge intended to permit Air France to change the terms of the January 3 contract. Characterized thus, the dispute would fall within the category

of major dispute. Plaintiff claims that Article XVII (q)

> "is illegal and in violation of the Railway Labor Act. The procedure for determining who is the representative of employees under the Railway Labor Act are [sic] specified in the Act. The clause, which was forced into the contract by Air France, is clearly an attempt to by-pass [this procedure]." Complaint ¶ 12.

Jurisdiction to consider major disputes lies with the National Mediation Board under section 2 of the RLA, 45 U.S.C. § 152. Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 378 (1969); Westchester Lodge 2186 v. Railway Express Agency, Inc., supra; Brotherhood of Railway & S.S. Clerks v. United Air

Lines, Inc., 325 F.2d 576 (6th Cir. 1963), cert. dismissed, 379 U.S. 26 (1964). Plaintiff claims that Article XVII (q) is illegal and therefore that Air France's actions constitute an alteration of the existing contract. As well as considering issues relating to changes in existing contracts or formation of new ones, the NMB has been granted primary authority over issues of representation of employees in the bargaining process. 45 U.S.C. § 152, Ninth. Brotherhood of Local Fireman & Enginemen v. Seaboard Coast Line Railroad Co., 413 F.2d 19 (5th Cir.), cert. denied, 396 U.S. 963 (1969); Howard v. St. Louis-San Francisco Railway Co., 244 F.Supp. 1008 (D.C. Mo. (1965), aff'd. 361 F.2d 905 (8th Cir.), cert. denied, 385 U.S. 986 (1966); Ruby v. American Airlines, Inc., supra; Dones v. Eastern Air Lines, Inc., 408 F.Supp. 1044, 1048 (D.P.R. 1975).

The United States Court of Appeals for the First Circuit has expounded upon this principle in a case calling for a determination of the representative of airline employees. The plaintiff union was the bargaining representative of certain Northeast Airline employees prior to the merger of Northeast and Delta Air Lines. The merger was accomplished under a Civil Aeronautics Board order which specifically affected certain working conditions. Plaintiff claimed that Northeast should have negotiated with it regarding the effects of such merger terms. The court explained:

> "Where there is no real question about whether a union is the legitimate representative of an airline's employees, the . . . function of deciding the

> extent of the duty to bargain rests properly with the federal court . . . .
>
> "However, the duty to bargain imposed by the Railway Labor Act is a duty to bargain with a chosen representative of the majority of the craft or class of employees. At the very least, the merger created real doubts about whether the plaintiffs represent the majority of any Delta [Airlines] craft or class of employees, and where there is such doubt, federal courts leave resolution of the dispute to the NMB."

International Association of Machinists and Aerospace Workers v. Northeast Airlines, Inc., 536 F.2d 975, 977 (1st Cir.), cert. denied, 45 U.S.L.W. 3364 (U.S. Nov. 15, 1976) (citations omitted).

See also Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union, supra, 413 F.Supp. at 685.

The complaint in this case charges that defendant acted in violation of the contract and seeks a declaration of the contract's vitality. The defendant's justification of its actions as proper under the contract would seem to categorize the dispute as minor. Local 1477, United Transportation Union v. Baker, supra, 482 F.2d at 230; Rutland Railway v. Brotherhood of Locomotive Engineers, 307 F.2d 21 (2d. Cir. 1962), cert. denied, 372 U.S. 954 (1963). It is obvious, however, that the gravamen of the complaint concerns IAM's continued representation of Air France's cargo agents--a major dispute within the primary jurisdiction of the NMB. In fact. Air

France admitted in court that Article XVII (q) was inserted in the January 3 contract in order to circumvent prior rulings of the NMB which denied certification of cargo agents as a class of employees to be represented by the IBT. Transcript of June 24, 1977, at 14-15.

This Court concludes that the issue here is really one of representation, "a subject which Congress has given the Mediation Board the duty to determine." Ruby v. American Airlines, Inc., supra, 323 F.2d at 254. Therefore it will not exercise jurisdiction over the matter. Burlington Northern Inc. v. American Railway Supervisors Association, 503 F.2d 58 (7th Cir. 1974), cert. denied, 421 U.S. 975 (1975); Brotherhood of Railway, Airline & Steamship Clerks v. Pan American World Airways,

Inc., 404 F.2d 938 (2d Cir. 1969); Aircraft Mechanics Fraternal Association v. United Airlines, Inc., 406 F.Supp. 492 (N.D. Cal. 1976). Nor will the Court exercise its discretion to issue an injunction to preserve the status quo while the procedures for settling the dispute are exhausted. This refusal to grant the equitable relief requested by the plaintiff is justified where it does not appear that the party has pursued those administrative remedies which the injunction is intended to protect.

Accordingly, the plaintiff's motion is denied and the action is dismissed.

So ordered.

Dated: New York, New York
July 1, 1977

/s/ Charles H. Tenney
U.S.D.J.

Appendix D

Telegram of May 4, 1977

International Association of
Machinists and Aerospace Workers
8 Freer Street
Lynbrook, New York 11563

Attn: Mr. Wally Haber

By virtue of the decision of the National Mediation Board Dated March 23, 1977 in United Airlines, Inc., R-4550, and Article XVII(q) of the agreement , effective October 1, 1976 between Compagnie Nationale Air France and the International Association of Machinists and Aerospace Workers (I.A.M. & A.W.) representing cargo agents in the employ of Air France. That agreement has been terminated. Such termination applies to Article II(a) under which Air France recognized the I.A.M. & A.W. as bargaining agent for employees covered by the agreement and article XIX (h) under which Air France agreed to deduct union dues from the pay of employees during the life of the agreement. Since the I.A.M. & A.W. has not been certified as the representative of these employees under the provisions of the Railway Labor Act and its treatment as bargaining agent for those employees has depended exclusively on the voluntary recognition agreement embodied in Article II(a), Air France now has no further obligation to recognize the I.A.M. & A.W. as the bargaining agent for the employees formerly covered by the agreement. There since the agreement has been terminated as described above, effective this date the company will not voluntarily continue to recognize the I.A.M. & A.W. as bargaining agent for the cargo employees formerly covered by the agreement.

Signed Roland J. Hawkins
Vice President and General Manager North and Central
American Division Compagnie Nationale Air France